

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

CHEVRON USA, INC.,	§	
PLAINTIFF,	§	
	§	
v.	§	CIVIL ACTION NO. 4:06-CV-138-BE
	§	
KENNETH E PALMER, ET AL.,	§	
DEFENDANTS.	§	

MEMORANDUM OPINION AND ORDER

Came on for consideration the motion for summary judgment [doc. 42], filed February 1, 2007, by Plaintiff Chevron USA, Inc. Chevron USA, Inc., seeks summary judgment establishing (1) the Defendants' liability under continuing guaranties for indebtedness incurred by Duke Petroleum; (2) the damages, costs, expenses, and attorneys fees arising from attempts to collect the indebtedness; and (3) that Defendants' affirmative defenses fail as a matter of law.

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 2509-10, 91 L.Ed.2d 202 (1986). The movant bears the initial burden of showing that no genuine issues of material fact exist, but once the movant makes such a showing, the burden shifts to the nonmovant to produce competent summary judgment evidence of the existence of a genuine issue of material fact. *Anderson*, 477 U.S. at 256-57, 106 S.Ct. at 2514, 91 L.Ed.2d 202. The court views all of the evidence and inferences therefrom in the light most favorable to the nonmovant. *Hibernia Nat'l Bank v. Carner*, 997 F.2d 94, 97 (5th Cir. 1993).

Having considered the motion, response, and reply briefs, relevant legal authority, and the summary judgment evidence submitted, the court finds that the motion for summary judgment should be denied because there are material fact issues to be determined with respect to Plaintiff's enforcement of and Defendants' liability under the guaranty agreements. Plaintiff's motion for summary judgment with respect to its damages and entitlement to attorneys' fees, expenses, and related costs is premature.

ORDER

Plaintiff's Motion for Summary Judgment is denied.

SIGNED APRIL 18, 2007.

/s/ Charles Bleil  
CHARLES BLEIL  
UNITED STATES MAGISTRATE JUDGE